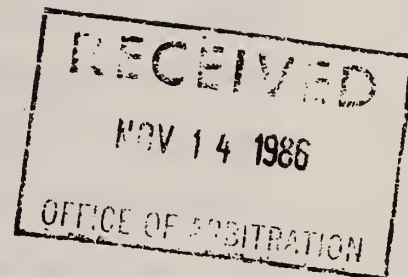


IN THE MATTER OF the Ontario Human Rights Code, 1981, c. 53, as amended;

AND IN THE MATTER OF a Complaint dated February 16, 1984 made by Ms. Valerie Lothian, alleging discrimination in employment by the Catholic Children's Aid Society of Metropolitan Toronto, W. Brennan and G. McNeely;



AND IN THE MATTER OF a Board of Inquiry appointed to hear and decide the Complaint.

BOARD OF INQUIRY: M.L. Friedland, Q.C.

APPEARANCES: H.P. Rolph, Counsel for
the Ontario Human Rights
Commission

A.P. Tarasuk, Counsel for
the Catholic Children's
Aid Society of
Metropolitan Toronto, W.
Brennan and G. McNeely

Hearings in the above matters were held in Toronto on August 6, September 24 and 25, October 6, 16 and 17, 1986.

DECISION

On February 16, 1984 Ms. Valerie Lothian filed a complaint with the Ontario Human Rights Commission alleging that she had been discriminated against by the Catholic Children's Aid Society of Metropolitan Toronto and two of its officials, William Brennan and Gerald McNeely, in connection with her employment with the Society. The complainant is black and an Anglican. The Commission alleged discrimination on the basis of race, colour and creed, contrary to sections 4 and 8 of the Ontario Human Rights Code. The respondents deny that race, colour or creed was a factor in their decisions.

I was appointed on July 14, 1986 as a Board of Inquiry by the Minister of Labour to hear and decide the complaint. Hearings were held in Toronto on August 6, September 24 and 25, October 6, 16 and 17, 1986.

This case is part of an ongoing controversy between the Ontario Human Rights Commission and the Catholic Children's Aid Society of Metropolitan Toronto on the question of the extent to which the Society may discriminate in favour of Catholics in its hiring policies. It is clearly entitled to do so in relation to its service activities, as its name makes clear. Some discrimination, it seems, is permissible in personnel matters. Section 23 of the Code states that "a religious ... organization that is primarily engaged in serving the interests of persons identified by ... creed" may legitimately give preference in employment to "persons similarly identified if the qualification is a reasonable and bona fide qualification because of the nature of the employment". Where is the line to be drawn? This Board was not asked to resolve this difficult issue. I am called on to determine only the factual issue of whether there was discrimination in this specific

case. I would, however, urge the parties to continue to make an effort to resolve the broader issues through discussion and negotiation.

After considering the oral evidence and the documents filed (even assuming that the contested evidence of earlier negotiations is admissible), I have concluded that there was no discrimination on the basis of race, colour or creed in this case. Counsel for the Commission virtually conceded that there was little if any evidence supporting discrimination on the basis of race or colour. His main thrust was on the basis of creed, that is, religion. I do not believe, however, that the Society took religion into account in its decisions in relation to Ms. Lothian.

Valerie Lothian had been a secretary, employed since 1980 by the Scarborough Branch of the Society. She appears to have been an excellent secretary. Shortly after she started working with the Society she became interested in training as a child care worker. She enrolled in George Brown College and took night courses towards the diploma. The Society paid the fees for the courses. After her courses were completed it was then necessary for her to undertake two major field placements. In April, 1983 she applied to the Society for an educational leave for 8 months, starting in September, 1983. She wanted to work only half time and take on the educational placement half time. The Society refused this request on the basis that the anticipated need for child care workers was decreasing at that time. There were many child care workers already available in the job market and it did not make sense to the Society, at a time of severe budget restraint that had recently been imposed on the Society, to support this educational leave. The Society needed more social workers and they were willing to sponsor further training for them; they did not need more

child care workers. Apart from Ms. Lothian's case, the Society had never given an educational leave for cross-disciplinary training, but had only granted leaves to train persons in fields in which they already were employed. This decision by the Society appears to me to have been a reasonable one for the Society to make. Religion did not appear to have been a factor in the decision. Indeed, according to the evidence, the key decision makers did not seem to know Ms. Lothian's religion.

Ms. Lothian then requested that she be given a part-time position at an hourly rate, without benefits, sharing the position equally with another person. This arrangement was supported by the Scarborough Branch, in part because it would enable them to train another person who would take over Ms. Lothian's position on a full-time basis at the end of the eight-month period. The Branch, in fact, arranged for someone to share the position on this basis. In August, however, it became evident to the Scarborough Branch that Ms. Lothian would need a second leave in the following year and planned to work full-time with the Society over the summer. The person who would have been interested in sharing the job if there had been only one leave was not interested in such an arrangement. The Branch decided that under these circumstances a shared position was not desirable from the point of view of business efficiency. Again, the decision appears to me to have been a reasonable one for the Society to make. As in the earlier decision, religion did not appear to have been a factor.

I therefore dismiss the complaint. This is not a case for awarding costs against the Commission under section 40(6).

IN THE MATTER OF the Ontario Human Rights Code, 1981, c. 53, as amended;

AND IN THE MATTER OF a Complaint dated February 16, 1984 made by Ms. Valerie Lothian, alleging discrimination in employment by the Catholic Children's Aid Society of Metropolitan Toronto, W. Brennan and G. McNeely;

AND IN THE MATTER OF a Board of Inquiry appointed to hear and decide the Complaint.

ORDER

This matter coming on for hearing on August 6, September 24 and 25, October 6, 16 and 17, 1986, before this Board of Inquiry, pursuant to my appointment by the Honourable William Wrye, Minister of Labour, dated July 14, 1986, in the presence of Counsel for the Ontario Human Rights Commission and Counsel for the Catholic Children's Aid Society of Metropolitan Toronto, W. Brennan and G. McNeely, the Respondents, upon hearing the evidence adduced by the parties and what was alleged by the parties and upon the findings of this Board that the Respondents did not discriminate against Ms. Valerie Lothian with respect to employment:

It is ordered that the Complaint be dismissed.

Dated this 12th day of November, 1986.

M. L. Friedland

Martin L. Friedland, Q.C.
Chairman, Board of Inquiry

